coatings. (A third reference, Dust, is believed to be relied upon to show that the use of specific materials, which are not recited in the independent claims, would allegedly be obvious.) The Office Action further states that it would have been obvious to combine the EB cured binder of Kurth with the cold-sealable packaging of Zhang in order to gain the solventless adhesion of the Kurth coating, because solvents can affect the health of packaging personnel.

No Motivation to Combine the Cited References

The conclusion that it would have been obvious to combine the references is respectfully traversed. Given that solventless binders are known, there still exists no suggestion in the cited references to apply the binder of Kurth to a substrate for flexible packaging material. Kurth itself gives a laundry list of suitable applications for the binder at column 8, lines 5 - 9. The list, which is clearly intended to highlight the broadest reaches of the coating's usefulness, makes no mention of flexible packaging. In fact, the list goes so far as to specifically cite cardboard packaging, as distinguished from flexible packaging. With regard to the listed applications, there is no concern over the problems confronted by the present invention, because the problems are unique to the field of flexible packaging. One such problem, as described in the specification at page 2, lines 1 - 7, is the potential for migratory additives to poison the cold seal cohesive on the opposite side of the substrate when the packaging material is wound in a roll. Neither Kurth, nor any other reference cited, suggests that an energy-cured coating, whether solvent free or not, would be advantageous in solving this difficulty. Although the EB cured coating of the present invention may in fact be solvent free, that feature is not what is claimed.

Kurth indicates that various additives known to those in the field of paint technology can be added to the coating. The noted additives include fillers, pigments, solvents and leveling agents. There is no mention of additives, such as slip agents, that are commonly used to enhance processing characteristics of flexible packaging material. As discussed in the specification of the present application at page 6, line 28 through page 7, line 7, a chief advantage of using an EB cured coating is the reacted-in or fixed nature of the processing additives. This feature solves, for example, the above-noted problem of slip agent migration. Neither Kurth, nor any of the other cited references, provide a suggestion or motivation to utilize an EB cured coating to solve such problems.

Non-Analogous Art

Kurth fails to suggest the use of an EB cured coating for flexible packaging, in part, because it does not relate to the field of flexible packaging. In order to rely on a reference as a basis for rejection of a claim, the reference must be analogous prior art. MPEP § 2141.01(a). The Federal Circuit has identified two criteria for determining if an art reference is relevant: (1) whether the art is from the same field of endeavor, regardless of the problem addressed, and (2) if the art is not within the field of the inventor's endeavor, whether the reference still is reasonably pertinent to the particular problem with which the inventor is involved. *In re Clay*, 966 F.2d 656, 23 USPQ2d 1058, 1060 (Fed. Cir. 1992).

Thus, the scope of the relevant prior art in the present case is determined by considering that which is from the inventors' field of endeavor, which is flexible packaging for candy bars or other confectionery. (See page 1, lines 4 – 5 of the specification.) A reference that is not in this field may be considered relevant art if it is reasonably pertinent to the problem faced by those inventors, which was the difficulty of economically producing a packaging structure free of mobile additives, which could otherwise poison the cold seal cohesive or contaminate the contents of the package. (See page 2, lines 1 – 7 of the specification.) Therefore, the scope of the relevant art is that which relates to flexible packaging for candy bars or other confectionery, or the difficulty of economically producing a cold seal packaging structure that is free of mobile additives.

As previously discussed, Kurth relates to the field of paint technology (column 8, line 2), not flexible packaging. The problem Kurth sought to solve was the provision of solvent free binder dispersions. The Kurth inventors simply had no interest in the problems associated with migration of processing additives in flexible packaging material. Thus, Kurth is not analogous art, and the present rejections based thereon should be withdrawn.

For the reasons noted above, it is respectfully submitted that the independent claims, and the claims that depend therefrom, are patentable over the references cited. In order to underscore the distinctions noted above, and to still further distinguish the present invention from the dispersion of Kurth, claim 10 has been amended to recite that the energy-cured coating includes fixed slip additives. New claims 25 and 26 recite similar elements. Claim 10 also now recites that the packaging material is flexible. Support for these elements is found in Figure 1, its written description in the specification, and at page 1, lines 4 – 5, and page 7, lines 1 – 4. As noted

above, none of the cited references describe or suggest the use of an EB cured coating for flexible packaging, let alone such a coating with fixed slip agents.

All of the pending claims are believed to be in condition for allowance. Therefore, it is respectfully requested that the present rejections be reconsidered and withdrawn. A Notice of Allowance is solicited.

Respectfully submitted,

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VERSION WITH MARKINGS SHOWING CHANGES MADE

In the Claims:

10. A package comprising:

at least one sheet of flexible packaging material comprising[:],

a substrate comprising at least one sheet of plastic material[;],

a cold-seal cohesive coating on an inner side of the substrate[;], and

an energy-cured coating comprising fixed slip agents on an outer side of the substrate;

wherein said package has at least one seam formed by portions of said cold-seal cohesive coating cohering together.